

When an in-state supplier makes a sale to a combination contractor/retailer of tangible personal property that will be incorporated into realty located in Illinois, the contractor will incur Retailers' Occupation Tax liability, including any applicable local taxes. See 86 Ill. Adm. Code 130.2075(b)(2) and (b)(3). (This is a GIL.)

July 13, 2006

Dear Xxxxx:

This letter is in response to your letter dated August 26, 2004, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at www.tax.illinois.gov to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry is fact intensive and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

On behalf of our client, we respectfully request a private letter ruling under 2 Ill. Admin. Code Section 120.110 on the following items:

- 1) Use tax is owed on the cost of materials of overhead doors and guttering installed into real property at the following rates:
 - a) If the materials installed are purchased from out of state, the rate owed is 6.25%
 - b) If the materials installed are purchased from a supplier in the State of Illinois, the rate is the local rate of 7.5% and is reported as ROT instead of UT
- 2) Use tax is owed on the cost of materials used to repair overhead doors and guttering (whether previously installed by CLIENT or another installer) at the rate of 6.25% (not sales tax on the retail price of the materials).
- 3) If installation occurs in Illinois from the company's CITY/STATE office, the tax due is use tax at a rate of 6.25%, not at the local rate at the location where the installation is performed.

- 4) If installation occurs in Illinois from the company's CITY/STATE office **and** the materials are purchased from an Illinois supplier, the tax due is use tax at a rate of 6.25%, not at the CITY, IL rate of 7.50%.
- 5) Use tax at a rate of 6.25% would be owed on items **ordered from an out-of-state location** for use in Illinois, even though the materials were manufactured in Illinois and payment is sent to an Illinois address.

MATERIAL FACTS

CLIENT is a dual-operator construction contractor with locations in CITY, Illinois, and CITY/STATE. The operation in CITY/STATE operates under the name of CLIENT of COUNTY. CLIENT installs and services overhead doors and guttering. The Company also makes infrequent sales of materials at retail (over the counter). Most of the materials purchased and used in the installation process are purchased from out of state suppliers on a tax-free basis. However, a few materials are ordered from a STATE location which were originally manufactured in Illinois, then sent to the supplier's warehouse in STATE (the supplier has no Illinois warehouse facilities). These materials are then shipped from the STATE warehouse to the CITY, Illinois location to be used in Illinois construction jobs. The payment for these materials is then sent to the supplier's main address in Illinois.

RELEVANT AUTHORITIES

Illinois Department of Revenue regulations under Title 86 Part 130 Section 130.2075(b)(2) state that the purchasing contractor may assume the liability for reporting and paying the tax to the Department in the same form (Illinois Retailers' Occupation Tax, and local Retailers' Occupation Tax if applicable) in which the supplier would have reported and paid such tax if the supplier had accounted for the tax to the Department.

In Section 130.2075(c), the regulations state that tangible personal property bought outside this State either by Illinois or out-of-state construction contractors or builders in such a way that the seller does not incur Retailers' Occupation Tax liability and used in this State for building purposes is subject to the Use Tax. These regulations are also found in Section 130.1940(c).

We can find no relevant authority on what taxes are due on purchases of materials by a contractor from a warehouse located out of state where no in-state warehouses are located although the materials were manufactured in Illinois and payment is made to the Illinois office.

REGULATION SECTION 1200.100(b) DISCLOSURES

Please be advised that neither CLIENT of CITY, nor any related taxpayer has ever been involved in any current or prior protest or litigation involving this issue. However, the Illinois Department of Revenue has recently audited CLIENT of CITY (including the operations in STATE known as CLIENT of COUNTY) and the auditor has filed his report. The report was signed by the taxpayer, and the tax was immediately paid. Additionally, to the best of our knowledge and our client's knowledge, the Department

has never ruled on this issue or a similar issue for our client or any of its predecessors, and our client has never submitted and then withdrawn a request for a ruling on this or any other issue. We request that your ruling delete the name and address of our client (and our firm) before the ruling is disseminated.

If you are unable to issue a ruling consistent with the items above, please contact the undersigned to discuss this matter prior to issuing such a ruling. Thank you in advance for your prompt assistance regarding this matter.

DEPARTMENT'S RESPONSE:

The Department is without sufficient information regarding the above transaction to provide you with a Private Letter Ruling. Therefore, we hope the following general information will aid you in making a determination of your tax liabilities.

The relevant authority regarding the tax liabilities due on purchases of materials by contractors acting as combination retailers/construction contractors may be found in the Department's regulations located at 86 Ill. Adm. Code 130.2075(b)(2). This regulation requires the contractor to self-assess the tax liability directly to the Department in the same form as the supplier would have (Retailers' Occupation Tax including local occupation tax, if applicable), if the contractor provides the supplier with a certificate of resale at the time of purchase. The Department's regulation 86 Ill. Adm. Code 130.2075(b)(3) read in conjunction with Section (b)(2) discusses the situs of the local occupation taxes to be applied.

When an in-state supplier makes a sale to a combination contractor/retailer of tangible personal property that will be incorporated into realty located in Illinois, the contractor will incur Retailers' Occupation Tax liability, including any applicable local taxes. He incurs this liability because this is the form of liability his contractor would have incurred had he not accepted a resale certificate from the contractor. As indicated, local taxes may apply. In order to determine what local taxes will be incurred by the contractor, we look to the provisions of Section 130.2075 (b)(3). As that section indicates, local taxes will be incurred and paid for the benefit of the jurisdiction "in which the place of business at or from which the contractor or builder handles the transaction is located at the time the contractor converts the tangible personal property into real estate." For example, if a contractor handles the contractual agreement with the purchaser, such as a homeowner, in jurisdiction A and jurisdiction A imposes local taxes, those local taxes in jurisdiction A, will be incurred by the contractor in addition to his Retailers' Occupation Tax liability.

In contrast, when an in-state supplier makes a sale to a combination contractor/retailer of tangible personal property that will be incorporated into realty located in Illinois, and the contractor handles the transaction in a local jurisdiction that does not impose any local taxes, then he will incur ROT at the 6.25% rate. As indicated above, this results because the contractor steps into the shoes of the supplier, who would have incurred ROT liability. However, since the local jurisdiction where the contractor handles the transaction does not impose local taxes, no local taxes would be imposed. The result would be the same (e.g., no local taxes) if a contractor purchased materials from an in-State supplier and then handled the transaction from an out-of-State location. In general, the location at which the purchase order is accepted from the service customer determines the proper local tax rate. For example, see 86 Ill. Adm. Code 270.115.

Please note that a supplier makes an Illinois retail sale (e.g., the purchase order is accepted in Illinois) and incurs Retailers' Occupation Tax liability, even if the property used to fill that order is shipped into Illinois from an out-of-State location. This is also the case if the supplier makes an

Illinois retail sale (e.g., purchase order is accepted in Illinois), manufacturers the property in Illinois, ships it out of Illinois to its out-of-State warehouse and then fills the order by shipping the product back into Illinois. These transactions are considered sales made by an Illinois supplier. Thus, a combination contractor/retailer will incur ROT on these transactions because he is stepping into the shoes of a supplier that incurs ROT liability.

I hope this information is helpful. If you require additional information, please visit our website at www.tax.illinois.gov or contact the Department's Taxpayer Information Division at (217) 782-3336. If you are not under audit and you wish to obtain a binding PLR regarding your factual situation, please submit a request conforming to the requirements of 2 Ill. Adm. Code 1200.110 (b).

Very truly yours,

Edwin E. Boggess
Associate Counsel

EEB:msk